

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Lagorio Management Corporation, a California Limited Liability Company;
Norcal Rental Group, LLC, a California Limited Liability Company

Defendants.

Case No.

Complaint For Damages And Injunctive Relief For Violations Of: Americans With Disabilities Act; Unruh Civil Rights Act

Plaintiff Scott Johnson complains of Lagorio Management Corporation, a California Limited Liability Company; Norcal Rental Group, LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1 2. Defendant Lagorio Management Corporation owned the real property
2 located at or about 36660 Fremont Blvd, Fremont, California, in August
3 2020.

4 3. Defendant Lagorio Management Corporation owns the real property
5 located at or about 36660 Fremont Blvd, Fremont, California, currently.

6 4. Defendant Norcal Rental Group, LLC owned Cresco Equipment
7 Rentals located at or about 36660 Fremont Blvd, Fremont, California, in
8 August 2020.

9 5. Defendant Norcal Rental Group, LLC owns Cresco Equipment Rentals
10 located at or about 36660 Fremont Blvd, Fremont, California, currently.

11 6. Plaintiff does not know the true names of Defendants, their business
12 capacities, their ownership connection to the property and business, or their
13 relative responsibilities in causing the access violations herein complained of,
14 and alleges a joint venture and common enterprise by all such Defendants.
15 Plaintiff is informed and believes that each of the Defendants herein is
16 responsible in some capacity for the events herein alleged, or is a necessary
17 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
18 the true names, capacities, connections, and responsibilities of the Defendants
19 are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. The Court has subject matter jurisdiction over the action pursuant to 28
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. Plaintiff went to Cresco Equipment Rentals in August 2020 with the
7 intention to avail himself of its goods or services motivated in part to
8 determine if the defendants comply with the disability access laws.

9 11. Cresco Equipment Rentals is a facility open to the public, a place of
10 public accommodation, and a business establishment.

11 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
12 to provide wheelchair accessible parking in conformance with the ADA
13 Standards as it relates to wheelchair users like the plaintiff.

14 13. Cresco Equipment Rentals provides parking to its customers but fails to
15 provide wheelchair accessible parking.

16 14. A couple of problems that plaintiff encountered is that there was no
17 accessible parking in the parking lot. While there was an ADA sign in front of a
18 parking space, the parking space has been allowed to fade. The access aisle had
19 faded white lines and there was no "NO PARKING" warning on it. On
20 information and belief, the defendants do not maintain the parking lot.
21 Additionally, there were slopes in the faded parking space reserved for persons
22 with disabilities that exceeded 2.1%.

23 15. Plaintiff believes that there are other features of the parking that likely
24 fail to comply with the ADA Standards and seeks to have fully compliant
25 parking available for wheelchair users.

26 16. On information and belief the defendants currently fail to provide
27 wheelchair accessible parking.

28 17. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 18. As a wheelchair user, the plaintiff benefits from and is entitled to use
3 wheelchair accessible facilities. By failing to provide accessible facilities, the
4 defendants denied the plaintiff full and equal access.

5 19. The failure to provide accessible facilities created difficulty and
6 discomfort for the Plaintiff.

7 20. Even though the plaintiff did not confront the following barriers, the
8 entrance door handle has a panel style handle that requires tight grasping to
9 operate. Additionally, the sales counter is too high. Although there is a lowered
10 portion of the counter, this is not used to conduct transactions. There is no card
11 reader device on the lowered section. The defendants store tools on it. Plaintiff
12 seeks to have these barriers removed as they relate to and impact his disability.

13 21. The defendants have failed to maintain in working and useable
14 conditions those features required to provide ready access to persons with
15 disabilities.

16 22. The barriers identified above are easily removed without much
17 difficulty or expense. They are the types of barriers identified by the
18 Department of Justice as presumably readily achievable to remove and, in fact,
19 these barriers are readily achievable to remove. Moreover, there are numerous
20 alternative accommodations that could be made to provide a greater level of
21 access if complete removal were not achievable.

22 23. Plaintiff will return to Cresco Equipment Rentals to avail himself of its
23 goods or services and to determine compliance with the disability access laws
24 once it is represented to him that Cresco Equipment Rentals and its facilities
25 are accessible. Plaintiff is currently deterred from doing so because of his
26 knowledge of the existing barriers and his uncertainty about the existence of
27 yet other barriers on the site. If the barriers are not removed, the plaintiff will
28 face unlawful and discriminatory barriers again.

24. Given the obvious and blatant nature of the barriers and violations alleged herein, the plaintiff alleges, on information and belief, that there are other violations and barriers on the site that relate to his disability. Plaintiff will amend the complaint, to provide proper notice regarding the scope of this lawsuit, once he conducts a site inspection. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

25. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

26. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is

1 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
2 defined by reference to the ADA Standards.

3 c. A failure to make alterations in such a manner that, to the
4 maximum extent feasible, the altered portions of the facility are
5 readily accessible to and usable by individuals with disabilities,
6 including individuals who use wheelchairs or to ensure that, to the
7 maximum extent feasible, the path of travel to the altered area and
8 the bathrooms, telephones, and drinking fountains serving the
9 altered area, are readily accessible to and usable by individuals
10 with disabilities. 42 U.S.C. § 12183(a)(2).

11 27. When a business provides parking for its customers, it must provide
12 accessible parking.

13 28. Here, accessible parking has not been provided in conformance with the
14 ADA Standards.

15 29. When a business provides facilities such as door hardware, it must
16 provide accessible door hardware.

17 30. Here, accessible door hardware has not been provided in conformance
18 with the ADA Standards.

19 31. When a business provides facilities such as sales or transaction counters,
20 it must provide accessible sales or transaction counters.

21 32. Here, accessible sales or transaction counters have not been provided in
22 conformance with the ADA Standards.

23 33. The Safe Harbor provisions of the 2010 Standards are not applicable
24 here because the conditions challenged in this lawsuit do not comply with the
25 1991 Standards.

26 34. A public accommodation must maintain in operable working condition
27 those features of its facilities and equipment that are required to be readily
28 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

37. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

38. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

39. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

40. Although the plaintiff encountered frustration and difficulty by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: January 4, 2021

CENTER FOR DISABILITY ACCESS



By: _____

Amanda Seabock, Esq.
Attorney for plaintiff